

REMARKS

This paper is a response to the Final Office Action of Mar. 2, 2010. Prior to entry of this response, claims 2, 3, 6, 7, 9, 10, 14, 15, 18, 20-22, 26, 29-31, 33-37, and 44-46 were pending in this application. Claims 3, 6, 7, 9, 14, 18, 20-22, 29, 31, 33, and 44-46 are amended. Claims 2 and 15 are canceled and claim 47 is added. Accordingly, claims 3, 6, 7, 9, 10, 14, 18, 20-22, 26, 29-31, 33-37, and 44-47 will be pending upon entry of this paper. The claim amendments and the newly added claim are fully supported by the disclosure, e.g., by the portions of the disclosure that supported the claims pending in the application before entry of this response, and by paragraph [0028] of the published application. No new matter is added. In addition, the claim amendments and cancelations are made without prejudice.

In the current Office Action claims 2, 3, 6, 7, 9, 10, 14, 15, 18, 20-22, 26, 29-31, 33-37, and 44-46 were rejected. More specifically, the status of the claims in light of this Office Action is as follows:

- (A) claims 14, 15, 18, 20-22, and 45 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter; and
- (B) claims 2, 3, 6, 7, 9, 10, 14, 15, 18, 20-22, 44, and 45 were rejected under 35 U.S.C. § 102 as allegedly anticipated by U.S. Patent No. 6,240,555 ("Shoff"); claims 29-31, 34-37, and 46 were rejected under 35 U.S.C. § 102 as allegedly anticipated by U.S. Patent No. 6,631,523 ("Matthews"); claim 26 was rejected as allegedly obvious over Matthews; and claim 33 was rejected as allegedly obvious over a combination of Matthews and Shoff.

A. Rejections under 35 U.S.C. § 101

Claims 14, 15, 18, 20-22, and 45 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Specifically, the Office Action states that independent “[c]laim 45 is directed towards a tangible machine-readable medium” but appears to reject the above-listed claims on the basis that a “**tangible** machine-readable medium” claims could be directed to a signal and thus be non-statutory. The Office Action cites no legal authority to support this proposition but instead requests that the phrase “non-transitory” be added to the preambles of these claims.

While the preambles of claims 14, 18, 20-22, and 45 are amended to recite the phrase “non-transitory machine-readable storage medium” to expedite prosecution, it is noted that these amendments are made (1) under protest and (2) without changing the scope of these claims. Specifically, is respectfully noted that addition of the phrase “non-transitory” to the preambles of the these claims is redundant at least because the prior inclusion of the word “tangible” in these preambles already brought these claims within the patentable subject matter of § 101. Moreover, the Office Action cites no legal authority for the proposition that “storage” medium claims could cover “signals” or be otherwise non-statutory. In fact, the undersigned is aware of no such authority and believes that such authority cannot exist because it would be inconsistent with common usage and understanding of the English language.

Assuming *arguendo*, that signals *per se* were encompassed by these claims prior to entry of the amendments herein, it is believed that signals *per se*, are the only subject matter hereby removed from the scope of these claims by the above-discussed amendments.

The 35 U.S.C. § 101 rejection is respectfully submitted to be moot in light of claim 15’s cancelation.

In light of the amendments made herein and above remarks, withdrawal of the 35 U.S.C. § 101 rejection is respectfully requested.

B. Response to Rejections under 35 U.S.C. §§ 102-103

As noted above, each of claims pending prior to entry of this paper was rejected as either allegedly anticipated by, or obvious over, Shoff, Mathews, or a combination thereof. These rejections are respectfully traversed.

Independent claim 44 is respectfully submitted to be allowable at least because the applied references fail to disclose or suggest “the subsidiary data being received separately from the primary data via vertical blanking intervals (VBIs) of one or more other video content programs transmitted before transmission of the video content program” as now recited by claim 44.

The undersigned reviewed Shoff and Matthews and found no disclosure or suggestion of the above-quoted feature.

Independent claims 45 and 46 are respectfully submitted to be allowable at least because the applied references fail to disclose or suggest “the subsidiary data being received separately from the primary data via vertical blanking intervals (VBIs) of one or more other video content programs transmitted before transmission of the video content program” as now recited by each of claims 45 and 46.

Dependent claims 2 and 15 have been canceled. Accordingly, the 35 U.S.C. § 102 rejections of these claims are respectfully submitted to be moot.

The remaining claims each depend from one of the above-discussed independent claims. These dependent claims are respectfully submitted to be allowable based at least upon such dependence.

Withdrawal of the respective 35 U.S.C. §§ 102-103 rejections of each of the above-discussed claims is respectfully requested for at least the above-discussed reasons.

New independent claim 47 is respectfully submitted to be allowable at least because the applied references fail to disclose or suggest "receiving subsidiary data associated with a video program of primary content data at a video control device via vertical blanking intervals (VBIs) of another video program, wherein the other video program is broadcast before broadcast of the video program" as recited by claim 47.

Conclusion

In view of the foregoing, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 622-1711 if the Examiner believes that a teleconference may be useful for any reason.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary, such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

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